

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1003029
Date of DIBP's reports	27 February 2015 and 26 August 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

25 February 2013	Mr X was detained under ss 189(1) and 250 of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel (SIEV) 597 <i>Xenia</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Northern Immigration Detention Centre (IDC), Darwin.
27 February 2013	Mr X was re-detained under s 189(1).
17 April 2013	Transferred to Scherger IDC.
25 January 2014	Transferred to Curtin IDC.
28 August 2015	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). ²

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A.

¹ A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

² DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

5 March 2014	DIBP notified Mr X of the unintentional release of personal information ³ and advised that the privacy breach would be taken into account when considering Mr X's protection claims.
26 August 2015	DIBP advised that Mr X was referred to an external agency for investigation following his alleged involvement in criminal activities overseas. The matter is ongoing.
25 September 2015	Mr X's case was referred on a ministerial submission for consideration under s 46A to lift the bar.
29 September 2015	The Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.

Health and welfare

10 October 2013	International Health and Medical Services (IHMS) advised that Mr X presented to a general practitioner (GP) with nasal abnormalities. He was advised to cease smoking and provided with a nasal spray.
29 May 2014	Diagnosed with allergic rhinitis and prescribed with medication. His GP advised that he may require corrective surgery in the future.
10 June 2014	Mr X advised his GP that his nasal condition had partially improved, however his GP noted ongoing symptoms. He was referred to an ear, nose and throat specialist for further review.
4 August 2014	Disclosed a history of torture and trauma but declined specialist counselling. He was advised to self-refer as required.
31 May 2015	His mental health assessment noted that he was experiencing situational stress related to his prolonged detention. No further information was provided.

Other matters

28 July 2015	<p>The Ombudsman's office requested information from DIBP about the circumstances of the arrival of a number of people from SIEV 662 <i>Lambeth</i> who were detained on the Australian mainland, apparently as 'direct entry persons', but have been subject to the bar under s 46A.</p> <p>The Ombudsman's office also identified that, depending on DIBP's response, there may be more people who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p>
30 July 2015 – 25 August 2015	DIBP advised on four occasions that it expected to provide clarification as soon as information had been sourced from other areas within DIBP.

³ In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

1 September 2015	<p>The Ombudsman's office opened an investigation into the arrival and detention circumstances of people who arrived in Australian waters on 17 April 2013 aboard SIEV <i>Lambeth</i>.</p> <p>The Ombudsman's office also identified that there may be more arrivals, including Mr X who arrived on SIEV <i>Xenia</i>, who arrived in similar circumstances to those of SIEV <i>Lambeth</i>.</p> <p>A response from DIBP was requested by 30 September 2015 but not received.</p>
2 October 2015 – 22 October 2015	DIBP advised on three occasions that its response was awaiting clearance and would be delayed.
13 November 2015	The Ombudsman's office requested further information under its own motion powers into the arrival and detention circumstances of people who arrived in Australian waters between 13 August 2012 and 20 May 2013 who appeared to have been detained on the Australian mainland as 'direct entry persons' but remained subject to the s 46A bar.
26 November 2015	The matter was raised at a meeting with senior DIBP staff and it was requested that a response to the investigation into the people who arrived on SIEV <i>Lambeth</i> be provided to the Ombudsman's office by 10 December 2015.
16 December 2015	DIBP provided a response to the Ombudsman's request for information.
23 December 2015	<p>The Ombudsman notified the Minister for Immigration and Border Protection of his intention to conduct an investigation under his own motion powers into DIBP's administration of the detention of people who arrived in Australian waters on SIEV <i>Lambeth</i>.</p> <p>The Ombudsman further advised the Minister that he would ask DIBP to look further at other boats where the arrivals were detained in Darwin around the same period of time.</p>
25 February 2016	DIBP advised that an internal investigation had commenced to examine the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses.

Ombudsman assessment/recommendation

Mr X was detained on 25 February 2013 after arriving in Australia aboard SIEV *Xenia* and has been held in restricted detention for over two and a half years with no processing of his protection claims.

The Ombudsman notes that DIBP considered that Mr X was subject to the bar under s 46A for more than two and a half years until the Minister lifted the bar on 29 September 2015 to allow Mr X to apply for a temporary visa.

On the basis of the information available to the Ombudsman at the time of this report, it would appear that Mr X may not have been subject to the s 46A bar due to his arrival on the Australian mainland as a 'direct entry person' on 25 February 2013.

The Ombudsman notes that DIBP has commenced an internal investigation into the issues raised by the Ombudsman's own motion investigation and that it will keep the Ombudsman advised as this progresses. The Ombudsman recommends that priority is given to resolving the circumstances of Mr X's method of arrival, the provision of the *Migration Act 1958* under which he was detained, and whether he should have been subject to the s 46A bar.